

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PILAR TANJUATCO AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-23950. December 29, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Separate Petitions for Review were filed by taxpayer Pilar Tanjuatco and the Commissioner of Internal Revenue from the Decision of the Court of Tax Appeals dated October 31, 1964, in CTA Case No. 1246, entitled "Pilar Tanjuatco vs. Commissioner of Internal Revenue", ordering the Commissioner to refund to said taxpayer the sum of P579.90 as excess compensating tax paid on the car, with accessories, imported by her.

On June 26, 1960, Pilar Tanjuatco, hereinafter referred to as Taxpayer, imported into the Philippines from the United States a Chevrolet "Impala" car, with accessories, consisting of an air conditioning unit, radio and turboglide transmission, for which she paid, under protest, a compensating tax of P12,699.81 as computed by an appraiser of the Bureau of Customs. On March 3, 1961, she made a formal demand for the refund of the sum of P5,118.28 from the Commissioner of Internal Revenue, allegedly representing the excess of the actual payment over the correct amount due. However, in the absence of seasonable action by the Commissioner, the Taxpayer initiated in the Court of Tax Appeals, shortly before the expiration of the two-year period of limitation, a petition for the review of the assessment and for refund of the excess allegedly paid.

In its Decision dated October 31, 1964, the Court of Tax Appeals ordered the refund to the Taxpayer of the sum of P579.90 computed as follows:

Invoice value of car and accessories, plus freight

\$3,448.51

Value in Phil. currency at the rate of P3.20 to \$1.00

P 11,035.23

Special Import tax

988.25

Surcharge

25.00

Wharfage

3.00

Stamps

3.00

Arrastre and brokerage

65.42

Total Value

P 12,119.91

Compensating tax paid under protest

P 12,699.81

Compensating tax due

12,119.91

Overpayment

P 579.90

Both parties appealed separately.

The Taxpayer maintains that the basis of the computation of the compensating tax should be the actual purchase price appearing in the invoices less the discounts given, and that, for purposes of determining the landed cost, the same should be converted at par value, or, at \$1 to P2.00. On the other hand, the Commissioner takes the position that the basis should be the value in the "blue book", or the compilation of the retail factory price of cars published by various car manufacturers in the United States, and that the conversion rate from dollars to pesos should be at the rate of exchange of \$1 to P3.20 as fixed by the Monetary Board at the time of importation.

The difference in the computation may be graphically shown in the following comparative table:

B I R

TAXPAYER

Car

\$ 2,769.00

\$ 2,618.00

Air Conditioning Unit

300.00

300.00

Radio

76.36

58.00

Turboglide Transmission

199.00

167.00

Total

\$ 3,344.36

\$ 3,143.00

90%

90%

(90% thereon)

3,009.92

2,828.70

Add: Freight

619.81

619.81

Retail value of car & accessories

\$ 3,629.73

\$ 3,448.51

Times conversion rate

P 3.20

P 2.00

Retail Value in pesos

P11,615.13

P6,897.02

Special Import Tax

988.25

588.09

Surcharge

25.00

25.00

Wharfage

3.00

3.00

Stamps

3.00

3.00

Arrastre and Brokerage

65.42

65.42

12,699.81

7,581.53

Landed Cost

Times 100% (rate of compensating tax)

1.00

1.00

Compensating Tax due

P 12,699.81

P 7,581.53

Difference

P5,118.28

It is to be noted that the Taxpayer and the Court of Tax Appeals adopted the same figure of \$3,448.51 as the actual purchase price of the car and accessories, based on its discounted value. In converting into its equivalent value in Philippine currency, however, the Court of Tax Appeals applied the exchange rate of P3.20 to \$1.00, while the Taxpayer, the par value of P2.00 to \$1.00.

In her appeal from the judgment of the Tax Court, the Taxpayer has raised these errors:

"1.

The Court of Tax Appeals erred in holding that the dollar to peso conversion rate of the value of the car, for the purpose of determining the compensating tax due, should be \$1 to P3.20, instead of \$1 to P2.00.

2.

The Court of Tax Appeals erred in not holding that the rate of compensating tax due on the car subject of this case is only 75% of the landed cost thereof, and not 100%.

3.

The Court of Tax Appeals erred in not holding that the compensating tax due is only P5,686.14 instead of P12,119.91, and that therefore the refund due to the petitioner is P7,013.67 instead of only P579.90."

In its own appeal, the Commissioner of Internal Revenue main-tained:

- The Court of Tax Appeals erred in considering the discounted value of the car and its accessories appearing in the invoices as the retail value thereof in computing the compensating tax due thereon.

In short, the main issues for consideration are: (1) whether in the determination of the taxable landed cost of subject importation, it is the invoice value or the published retail factory price ("blue book" value) which should be taken into account; and (2) whether the con-version rate for purposes of determining the compensating tax is the par value of US\$1.00 to P2.00, or the exchange rate of US\$1.00 to P3.20.

I

Section 190 of the Revenue Code then in force (Commonwealth Act No. 466, as amended) provided that the compensating tax on imported articles payable by importers shall be based on "the total value thereof at the time they are received by such persons, includ-ing freight, postage, insurance, commission and all similar charges."

While Finance Department Order No. 289-A, dated November 19, 1957, directs that:

"1.

All cars imported for personal use, irrespective of the country of origin, shall be evaluated by the appraiser, either on the actual purchase price of the car when bought directly from the manufacturer or franchised dealer abroad, or if not known or questionable, the published retail fac-tory price for the year manufactured.

"2.

The actual purchase price of the car when bought directly from the manufacturer or franchised dealer abroad or the published retail factory price, whichever is accepted by the appraiser, shall be entitled to a depreciation allowance for the applicable model year of all makes of cars, regard-less of the country where manufactured in accordance with the following table.

x x x

"6.

The compensating tax shall be based on the current retail value, as determined in par. 2 above, plus import duty, special import tax, freight, insurance and all other expenses incident to importation." (Italics supplied)

Section 1405 of the Tariff and Customs Code, upon which Finance Department Order No. 289-A is predicated, reads:

"x x x Proceedings and report of ap-praisers. Appraisers shall, by all reasonable ways and means, ascertain, estimate and de-termine the value or price of the articles as required by law, any invoice, or affidavit there-to or statement of cost, or of cost of production to the contrary notwithstanding, and after re-vising and correcting reports of the examiners as they may judge proper, shall report in writing on the face of the entry the value so deter-mined irrespective of whether such value is equal, higher or lower than the invoice and/or entered value of the articles.

"Appraisers shall describe all articles on the face of the entry in tariff and such terms as will enable the Collector to pass upon the appraisal and classification of the same, which appraisal and classification shall be subject to his approval or modification, and shall note thereon the measurements and quantities, and any disagreement with the declaration."[1]

It is clear from Finance Department Order No. 289-A that evaluation by the appraiser shall be based either on the actual purchase price of the car (from the manufacturer or a dealer), or if not known or questionable, the published retail factory price for the year manufactured. In the case at bar, the actual purchase price of the car is known and is supported by invoices issued by the dealer in Oakland, California. The appraiser did not state that said invoices were questionable or were unreliable for lack of certification as to its correctness by the Philippine Consul at the port of origin, such that the published retail factory price or the "blue book" value should be applied. Nor does the record show any "report in writing on the face of the entry", as required in section 1405 of the Tariff and Customs Code, that the value of the car has been determined by an appraiser to be higher than its invoice price. Neither is there evidence to indicate that the invoice price of the car is not its actual purchase price. Consequently, as held by the Court of Tax Appeals, the actual purchase price of the car and its accessories, as discounted, is the value which should be taken into account in determining the taxable landed cost of the car. This conclusion is buttressed by the ruling in *Commissioner of Customs vs. Celdran* (22 SCRA 742 [1968]) to the effect that the tax for an imported car is to be based on the invoice value.

"x x x there is absolutely no evidence that the invoice price of the car is not its actual purchase price, so as to justify a disregard thereof and a resort to the published retail factory price. x x x"

This is not to say that customs authorities are bound by the invoice value of an importation. As held in *Lim Quim vs. Collector of Customs*[2] relied upon by the Commissioner, if the invoice values do not reflect the true value of the goods, appraisers may disregard the same and ascertain the value of the merchandise by all reasonable ways and means. But, certainly, the requirements in the pertinent law and regulations should be complied with.

II

As regards the second issue, the Taxpayer's submission that the application of the conversion rate of P3.20 per \$1.00 constitutes an alteration of the par value of the peso, which is one-half (1/2) of a US dollar, is without merit. For "par value" and "rate of exchange" are not necessarily synonymous. There is a difference between them. The "par value" is defined by law, and (as in the case of the peso) is based upon its gold content. The "rate of exchange", on the other hand, is "the price or the indication of the price, at which one can sell or buy with one's own domestic currency a foreign currency unit. Normally, the rate is determined by the law of supply and demand for a particular currency." [3]

In respect of the rate of exchange, Section 204 of the Tariff and Customs Code, specifically states:

"SEC. 204. Rate of Exchange. -- For the assessment and collection of import duty upon imported articles and for other purposes, the value and prices thereof quoted in foreign currency shall be converted into the currency of the Philippines at the current rate of exchange or value specified or published, from time to time, by the Central Bank of the Philippines." (Italics supplied)

Although this provision, as emphasized by the Taxpayer, refers only to assessment and collection of "import duty", it should be noted that the current rate of exchange is applicable not only for import duties but also "for other purposes." And considering that compensating taxes and customs duties are, in essence, akin to each other since both have the same purpose, which is to provide revenue, both are imposed on importations, both are based on the value of imported articles, and both are computed and collected by the same authority, there is no reason why the compensating tax cannot be included within the scope of the phrase "for other purposes."

Central Bank Circular No. 105 which took effect on April 25, 1960, specifically enumerates the transactions to which the official exchange rate of P2.00 per \$1 can be applied as well as transactions to be governed by the free market rate:

"2. Sales of exchange by the Central Bank at the official rate of P2.00 to \$1.00, plus the margin levy, shall be limited to the following transactions, and shall be subject to licensing by the Central Bank:

(a)

Controlled imports (EC, DC, EP, and SEP categories under the Central Bank Commodity Classification).

(b)

Government expenditures.

(c)

Existing contractual obligations previously approved by the Monetary Board.

(d)

Reinsurance premia.

"3. Sales of foreign exchange for transactions other than the above and those in excess of exchange licenses granted by the Central Bank, will be at the free market (refer to Circular No. 106); Provided, That blocked fiduciary funds and investment earning prior to 1960 shall continue to be governed by existing regulations; and Provided Finally, That no foreign exchange shall be sold for the importation of UI items except upon specific authorization of the Central Bank."

Since, obviously, the transaction at bar is not within the first group enumerated, it is the free market rate which is applicable. The Table of Philippine Exchange Rate Structure of the Central Bank indicates that from April 25 to September 11, 1960, the free market rate was P3.20 per \$1. Since the importation in question took place on June 29, 1960, it is said rate of exchange which is the conversion rate applicable.

As to the rate of compensating tax, suffice it to say that since the selling price in pesos of the car in question, as computed by the Court of Tax Appeals, and which we are upholding, is P12,119.91, it is evidently more than P10,000.00 and should be taxed at the rate of 100% of the selling price pursuant to Section 184 (A) of the Tax Code.

"x x x where the selling price of an auto-mobile exceeds ten thousand pesos the same shall be taxed at the rate of one hundred per centum of such selling price. x x x"

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, without special pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] cited in *Commissioner of Customs vs. Cedran*, 22 SCRA 747 (1968).

[2] (23 Phil. 509 [1912]).

[3] *Dictionary of Foreign Trade*, Henius, p. 294, cited in *Manuel & Co., Inc. vs. Central Bank*, 38 SCRA 533 (1971).

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